

Ordinance No.: 17-38  
Zoning Text Amendment No.: 13-05  
Concerning: US 29 Overlay Zone –  
Standards  
Draft No. & Date: 2 – 5/7/13  
Introduced: May 14, 2013  
Public Hearing: June 18, 2013  
Adopted: September 24, 2013  
Effective: September 25, 2013

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: Councilmembers Ervin and Floreen

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to revise the provisions of US 29/Cherry Hill Road Employment Area Overlay Zone to:

- allow additional residential and retail uses where the underlying zone is I-1;
- establish development standards for the additional uses; and
- generally amend the text of the zone to make it more concise, precise, and decisive

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-18.  
Section 59-C-18.13.

“OVERLAY ZONES.”  
“US 29/Cherry Hill Road Employment Area Overlay Zone  
of the Fairland Master Plan.”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*

*Underlining indicates text that is added to existing law by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*

*Double underlining indicates text that is added to the text amendment by amendment.*

*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*

*\* \* \* indicates existing law unaffected by the text amendment.*

## OPINION

Zoning Text Amendment (ZTA) 13-05, sponsored by Councilmembers Ervin and Floreen, was introduced on May 14, 2013.

ZTA 13-05 would allow property owners that are interested in pursuing plans for a mixed-use residential/retail project to proceed in advance of the Sectional Map Amendment that will implement the proposed zoning recommendations in the Draft White Oak Science Gateway Master Plan. In particular, ZTA 13-05 would allow multi-family residential and grocery store uses as part of a multi-use project where the underlying zone is I-1; establish development standards for the additional uses; and generally amend the text of the zone to make it more concise, precise, and decisive.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved with amendments. The Planning Board and Planning Staff recommended approval of ZTA 13-05 with plain English changes.

The Council conducted a public hearing concerning ZTA 13-05 on June 18, 2013. The two speakers recommended approval of ZTA 13-05. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

On September 9, 2013, the Committee (3-0) recommended approval of ZTA 13-05 with an amendment to delete the requirement for a minimum percentage of residential in a mixed-use building. In the Committee's opinion, a mixed-use project with less than 65 percent residential floor area would still make a positive contribution to the US 29 Overlay Zone. In addition, the Committee agreed with plain English edits recommended by the Planning Board.

The District Council reviewed Zoning Text Amendment No. 13-05 at a worksession held on September 24, 2013, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee; however, the Council changed the effective date to September 25, 2013.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 13-05 will be approved as amended.

## ORDINANCE

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. DIVISION 59-C-18 is amended as follows:**

**DIVISION 59-C-18. OVERLAY ZONES.**

\* \* \*

**Sec. 59-C-18.13. U.S. 29/Cherry Hill Road Employment Area Overlay Zone of the Fairland Master Plan.**

**59-C-18.131. Purpose.**

The purpose of this overlay zone is to:

- (a) Develop a compatible mix of office, regional commercial, and light industrial uses within a designated employment area.
- (b) Establish a uniform set of development standards for the zone.
- (c) Allow local and regional retail and service uses.
- (d) Encourage the use of appropriate traffic-limiting measures, where such measures are [not already in place] absent, such as car pools and use of mass transit.
- (e) Eliminate uses [not considered compatible] incompatible with the intent of this overlay zone.
- (f) Allow for multi-family residential uses as a part of a mixed-use development in certain situations, in combination with retail uses.

**59-C-18.132. Regulations.**

**(a) Land uses.**

- (1) The following uses are permitted in the U.S. 29/Cherry Hill Road Employment Area overlay zone:

- (A) All permitted and special exception uses allowed in the underlying zones are allowed in the U.S. 29/Cherry Hill Road Employment Area overlay zone, except as specifically modified [and set forth in] by this overlay zone.

- 27 (i) The following additional retail commercial uses are  
 28 permitted:  
 29 Beauty supply stores.  
 30 Computer and computer supply stores.  
 31 Electronics stores.  
 32 Express or mailing offices.  
 33 Food and beverage stores.  
 34 Music stores.  
 35 Office supply stores.  
 36 Pet supply stores.  
 37 Shoe stores.  
 38 Theaters, indoor.
- 39 (ii) The following additional commercial uses are permitted:  
 40 Eating and drinking establishment, excluding a drive-in,  
 41 Delicatessen,  
 42 Cafeteria,  
 43 Snack Bar,  
 44 Ice Cream Parlor.
- 45 (iii) The following additional cultural, entertainment or  
 46 recreational use is permitted:  
 47 \* \* \*
- 48 (iv) The following additional manufacturing and industrial,  
 49 service, and transportation/communication/utility uses  
 50 are permitted where the underlying base zone is I-2:  
 51 \* \* \*

(v) [[The following additional retail commercial use]] A grocery store is a permitted retail commercial use where the underlying base zone is I-1 [[:  
Grocery store]].

(vi) [[The following additional residential use is permitted, where]] Where the underlying base zone is I-1, multi-family residential uses are permitted under 59-C-18.132(b)(7) [[and the use is part of a mixed-use development that also includes principally commercial or retail commercial uses on the ground floor: Multi-family residential]].

(2) The following uses are prohibited in the U.S. 29/Cherry Hill Road Employment Area overlay zone:

\* \* \*

(b) **Development standards.** Development will proceed under the standards of the underlying zones, except as modified by the provisions of this overlay zone.

(1) **Setbacks.**

(A) Where the overlay zone adjoins, or is separated only by a public road from residentially zoned land that is recommended for residential use and development in the Fairland Master Plan, all buildings must be set back at least 100 feet from such residential land. All parking and maneuvering areas must be set back at least 50 feet from such residential land and be appropriately screened from such adjoining uses.

(B) Any building that devotes 50 percent or more of its gross floor area to a retail commercial use must be located at least 200 feet

from the boundary of the overlay zone, unless a waiver is granted by the Planning Board. The 200 foot building setback requirement must ~~[not] not be [reduced below]~~ reduced below ~~[[at least]]~~ 150 feet. The parking and maneuvering areas for such a building must be located at least 100 feet from the boundary of the overlay zone. A setback is not required from lot lines, zoning lines, utility rights-of-way or road rights-of-way within this overlay zone.

(C) Where the overlay zone adjoins residentially zoned land that adjoins US 29 or a service road that adjoins US 29, and the residentially zoned land is not used or recommended for residential use and development in the Fairland Master Plan, the following setback and screening requirements apply:

- (i) A setback is not required from the overlay zone boundary; however, notwithstanding the preceding subparagraph (B) above, buildings and parking areas must be ~~[[setback]]~~ set back at least 50 feet from US 29 or a service road that adjoins US 29[,]; and
- (ii) Screening and landscaping requirements must be established by the Planning Board through site plan review. The parking facility setback and screening requirements of Section 59-E-2.81 and 59-E-2.9 do not apply.

(2) **Retail commercial area.**

(A) Where the underlying base zone is not ~~[[other than the]]~~ C-6 ~~[[Zone]]~~:

- (i) the cumulative square footage of retail commercial uses permitted on land classified in each particular base zone within the boundaries of the overlay zone must [not exceed] be equal to or less than a total of 50,000<sup>1</sup> gross square feet; [[and]]
- (ii) development of retail commercial use cannot exceed 15,000<sup>1</sup> square feet on any individual lot; and
- (iii) [no] except for a grocery store, a single tenant, free-standing structure that devotes 50 percent or more of its gross floor area to a retail commercial use [may exceed a total of] must be equal to or smaller than 10,000 gross square feet.

(B) Subsection (A) also applies where the underlying base zone is C-6, and when development occurs [pursuant to] under Section 59-C-18.132(b)(6)(B).

(3) **Height limit.** A retail building must [not exceed] be equal to or less than 40 feet in height, excluding parapets.

(4) **Coverage limitation.** Where the underlying base zone is other than C-6, the coverage standards for principally retail buildings will be as follows:

(A) Green area must encompass at least 35 percent of the lot area.

(B) Off-street parking [is not allowed to] must occupy [more than] 45 percent or less of the lot area, except that in unusual circumstances the Planning Board may waive this requirement

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<sup>1</sup> Any square footage devoted: (i) to an eating and drinking establishment use, excluding a drive-in, and (ii) where the underlying base zone is I-1, to a grocery store, is in addition to this amount.

at the time of site plan approval upon a finding that a more compatible arrangement of uses would result.

\* \* \*

**(6) Retail commercial development.**

(A) Where the underlying base zone is C-6 and the principal use of the C-6 zoned property is a retail commercial use, then the standards of the C-6 ~~[[Zone]]~~ zone will apply[,] and, in addition:

- (i) [no] a single retail use within a multiple tenant principally retail use structure [may be less than a gross floor area of ] must be at least 10,000 square feet of gross floor area[[.]]; and
- (ii) [no more than] only one principally retail commercial use [can] may exceed a gross floor area of 100,000 square feet.

(B) Where the underlying zone is C-6 and the principal use of the C-6 property is other than retail commercial use, then the standards of the overlay zone will apply.

**(7) Multi-family residential development.**

Where a development includes multi-family dwelling units, the following standards must be satisfied:

- (A) The development must have a mix of uses that includes commercial or retail commercial uses.
- (B) [[At least 65 percent of the FAR of the development must be for residential use, and the]] The ground floor of the development must principally be for commercial or retail

commercial uses; however, the ground [[level]] floor may also include:

- (i) incidental non-commercial uses, such as lobbies, loading areas, and parking access; and
- (ii) a maximum of 10 percent of the total number of residential units in the mixed-use building.

(C) The building height must be equal to or less than 75 feet, excluding parapets and mechanical equipment.

(D) Except as provided in subsection (E), the maximum FAR of the mixed-use building is 1.0 FAR, of which the maximum FAR for residential use is .75 FAR[; and]].

(E) The maximum 1.0 FAR and the maximum 0.75 FAR of residential must be increased to accommodate the construction of moderately priced dwelling units and any density bonus authorized under Chapter 25A.

**(c) Trip reduction guidelines.** Within the overlay zone, compliance with the special trip reduction guidelines under Section 59-C-5.436[,] satisfies and represents full compliance with the requirements and[/or] goals for traffic mitigation/management.

**(d) Site plan.**

(1) Any retail commercial development in the U.S. 29/Cherry Hill Road Employment Area overlay zone must be approved under the site plan review provisions of Division 59-D-3, except where the cumulative redevelopment [does not exceed] is 20 percent or less of the existing gross floor area.

(2) For uses other than retail, site plan review is required only where it is required in the [underlying] underlying zone.

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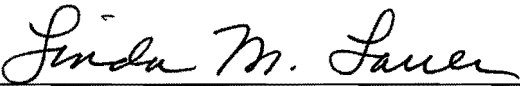
183       **Sec. 2. Effective date.** This ordinance becomes effective one day after the  
184 date of Council adoption.

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186 This is a correct copy of Council action.

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189 Linda M. Lauer, Clerk of the Council